

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

**JOHNNY POTTS and JANICE POTTS,
PLAINTIFFS,**

v.

**DYNCORP INTERNATIONAL LLC,
JAMES MCCANTS, et al.,
DEFENDANTS.**

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3:06-cv-00124-WHA

RESPONSE TO MOTION TO AMEND COMPLAINT

COME NOW the plaintiffs in the above styled cause and state that they have no objection to the defendants' motion to amend their complaint to add the defense of lack of subject matter jurisdiction, since 1) the motion to amend was filed within the time provided for in the scheduling order and 2) subject matter jurisdiction is a defense that may be raised at any stage in the proceedings. *See, e.g., Arbaugh v. Y&H Corp.*, 126 S. Ct. 1235, 1240 (U.S. 2006) ("The objection that a federal court lacks subject-matter jurisdiction, see, Fed. Rule Civ. Proc. 12(b)(1), may be raised by a party, or by a court on its own initiative, at any stage in the litigation, even after trial and the entry of judgment.").

However, the plaintiffs wish to make it clear that by consenting to the amendment they are NOT conceding that this Court lacks subject matter jurisdiction over this action and they will be filing a dispositive motion on this issue within the time limits permitted by the Court in its Rule 16 scheduling order.

Respectfully submitted on this the 5TH day of October, 2006.

MORRIS, HAYNES & HORNSBY

/s Nancy L. Eady

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing in the above referenced case on the 5th day of October, 2006 by filing the same electronically with the Clerk of the Court using the CM/ECF system which will send notification of the same to all attorneys of record.

/s Nancy L. Eady

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